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A MEDICARE LEARNING NETWORK® (MLN) EVENT

Medicare Shared Savings Program: Establishing a Repayment Mechanism

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Presenters:

Josef Otto (CMS)
Heidi McMahon (LMI)



Disclaimer

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Acronyms in This Presentation

- ACO: Accountable Care Organization
- ACO-ID: Axxxx always starts with an A and is followed by four numerical characters
- ACO-MS: ACO Management System
- CMS: Centers for Medicare & Medicaid Services
- E&O: Education & Outreach
- FFS: Fee-For-Service
- LEN: Legal Entity Name
- LOC: Letter of Credit
- RM: Repayment Mechanism
- RFI: Request for Information
- RMAG: Repayment Mechanism Arrangements Guidance



Agenda

- Section I. Introduction & Timeline
- Section II. Repayment Mechanism Requirements
 - General Terms
 - Repayment Mechanism Type Demonstrations
- Section III. Maintaining a Repayment Mechanism
- Section IV. Submitting Originals to CMS and Executing Arrangements
- Repayment Mechanism Resources
- Contact Us
- Question & Answer Session



Section I. Introduction & Timeline



Purpose and Timing

Shared Savings Program ACOs must establish a repayment mechanism to assure CMS that they can repay shared losses for which they may be liable upon reconciliation for each performance year under which they accept performance-based risk. (Refer to 42 CFR § 425.204(f).)

- When does an ACO need to establish a repayment mechanism? (Refer to 42 CFR § 425.204(f)(3).)
 - **Prior to the start of the agreement period:** An ACO entering an agreement period in Levels C, D, or E of the BASIC track or the ENHANCED track.
 - **Prior to the start of any performance year in which transitioning to risk:** An ACO participating in Level A or B of the BASIC track electing to participate in, or automatically transitioning to, a two-sided model, Level C, D or E of the BASIC track.
 - A renewing ACO, or a re-entering ACO that is the same legal entity as an ACO that previously participated in the program, may continue to use its existing repayment mechanism to support its participation in the new agreement period.



Types of Repayment Mechanism Arrangements

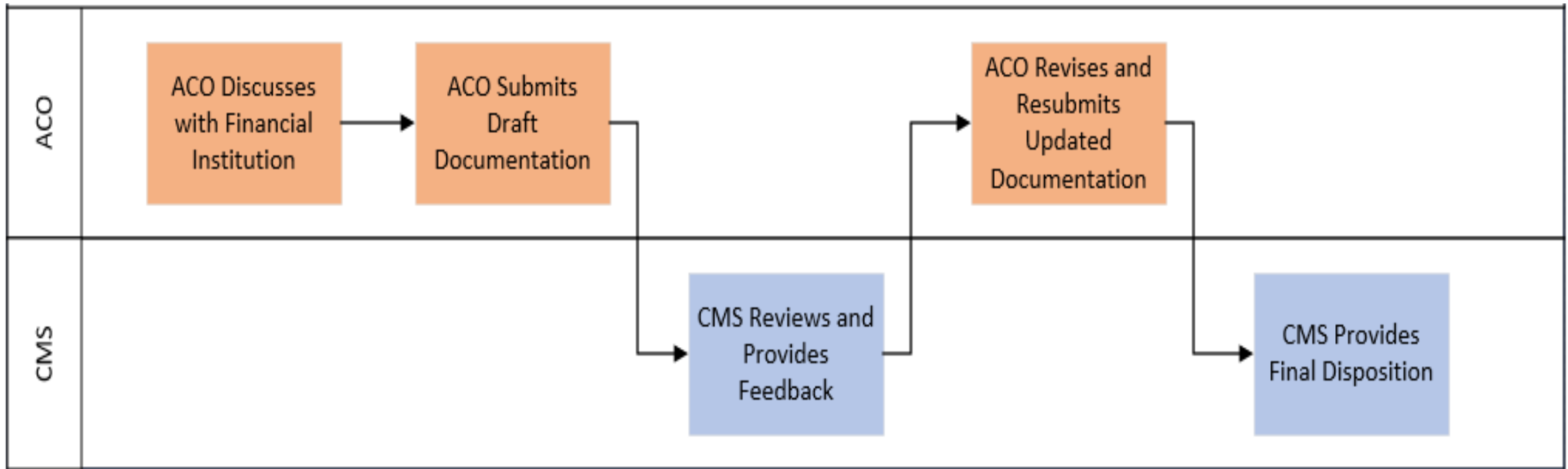
- **Escrow Account:** An escrow account with an insured institution.
- **Surety Bond:** A surety bond from a company included on the U.S. Department of Treasury's List of Certified Companies (available at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>).
- **Line of Credit:** A line of credit at an insured institution (as evidenced by a letter of credit that the Medicare program can draw upon).

Refer to 42 CFR § 425.204(f)(2).



Repayment Mechanism Review Process

Figure illustrates an overview of the repayment mechanism documentation review process during an application cycle and annual change request cycle (for ACOs transitioning to a two-sided model in the BASIC track's glide path)



Prepare to Establish a Repayment Mechanism

ACOs work with financial institutions to establish repayment mechanism arrangements. Preparation for establishing a repayment mechanism arrangement may include:

- Deciding what type of arrangement is best for your ACO and choosing a financial institution to work with to establish the arrangement.
- Identifying organizational contacts who can authorize establishing a repayment mechanism.
 - Only some ACO contacts are authorized to sign the repayment mechanism: ACO Executive, Authorized to Sign (primary and secondary), Financial Contact.
- Reviewing the [Repayment Mechanism Arrangements Guidance](#).



Submit Draft & Address Deficiencies

Select Dates from Application Timeline	Repayment Mechanism Actions (other required actions not shown)
June 8, 2021–June 28, 2021 at 12:00 p.m. (noon) Eastern Time (ET)	ACOs Submit Phase 1 of the Application <ul style="list-style-type: none">• Submit draft repayment mechanism documentation in ACO-MS for CMS review during the application submission period or change request cycle.
July 21, 2021–August 3, 2021 at 12:00 p.m. (noon) ET	ACOs Respond to Phase 1 RFI-1 <ul style="list-style-type: none">• Review repayment mechanism amount estimate included in the Participation Options Report.• Review deficiencies returned by CMS on repayment mechanism documentation.• Submit revised draft repayment mechanism documentation addressing deficiencies CMS identifies in RFI cycle.

Refer to the [Application Types & Timeline webpage](#) for updated information. Dates are subject to change.



Finalize Documentation

Select Dates from Application Timeline	Repayment Mechanism Actions (other required actions not shown)
August 25, 2021– September 10, 2021 at 12:00 p.m. (noon) ET	ACOs Respond to Phase 1 RFI-2 <ul style="list-style-type: none">• Wait for notification from CMS of the final repayment mechanism amount before finalizing the arrangement. Final repayment mechanism amount provided to ACOs on August 25, 2021.• Review deficiencies returned by CMS on repayment mechanism documentation.• Finalize documentation with financial institution and execute (if applicable).• Submit final documentation according to CMS' instructions—providing an electronic version and hard copy original (if applicable). Final repayment mechanism documentation due to CMS on September 10, 2021 at 12:00 p.m. (noon) ET.

Refer to the [Application Types & Timeline webpage](#) for updated information. Dates are subject to change.



Section II. Repayment Mechanism Requirements

- General Terms
- Repayment Mechanism Type Demonstrations



General Terms

- Beneficiary and Liable Party
- Duration
- Dollar Amount
- Condition for Calling Funds
- Demand Letter
- Replenishment
- Account Fees



Beneficiary and Liable Party

- Financial institutions issuing repayment mechanisms must designate CMS as the sole beneficiary within a letter of credit, recipient within an escrow agreement, or obligee within a surety bond.

Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C5-15-12
Baltimore, MD 21244

- The ACO that is applying to the Shared Savings Program must be the liable party for the repayment mechanism because it would be the liable party for any shared losses. The ACO legal entity name (LEN) detailed in ACO-MS is the ACO LEN that must be listed on the repayment mechanism.



Duration

The repayment mechanism must be in effect for the duration of the ACO's participation under a two-sided model plus 12 months following the conclusion of the agreement period. To meet this requirement, the repayment mechanism must satisfy one of the following criteria. Refer to 42 CFR § 425.204(f)(6).

Option 1: Term covers entire duration. The repayment mechanism covers the entire duration of the ACO's participation under a two-sided model plus 12 months following the conclusion of the agreement period. Refer to 42 CFR § 425.204(f)(6)(i)(A) and § 425.204(f)(6)(ii)(A).



Duration: Automatic Extension Clauses

Option 2: Two PY term + Automatic Extension Clause. The repayment mechanism covers a term of at least the first two performance years in which the ACO is participating under a two-sided model and provides for automatic, annual 12-month extensions of the repayment mechanism, such that the repayment mechanism will eventually remain in effect for the duration of the agreement period plus 12 months following the conclusion of the agreement period. Refer to 42 CFR § 425.204(f)(6)(i)(B) and § 425.204(f)(6)(ii)(B).

- The automatic, annual 12-month extensions begin on the last day of the ACO's first performance year under a two-sided model.
- An automatic extension clause should state that the financial institution will notify CMS at least 90 days in advance if it elects not to extend the repayment mechanism or if it wishes to terminate the repayment mechanism before it expires.
- Automatic extension clauses are relevant to letters of credit and surety bonds, but are not typically used in escrow accounts, which do not have a termination date.



Duration: Examples

Examples of repayment mechanism (RM) duration for ACOs entering or transitioning to a two-sided model for PY 2022:

Agreement Period Start date (End Date)	Repayment Mechanism Term Options	
	Term covers entire duration	Two PY term + Automatic Extension Clause
7/1/2019 starter & 2020 starter (December 31, 2024)	1/1/2022–12/31/2025	<ul style="list-style-type: none"> • First two PYs under risk: 1/1/2022–12/31/2023. RM expiration date: 12/31/2023. • First automatic extension occurs on 12/31/2022, extending RM through 12/31/2024. • Second automatic extension occurs on 12/31/2023, extending RM through 12/31/2025. • Final expiration date: 12/31/2025.
2022 starter (December 31, 2026)	1/1/2022–12/31/2027	<ul style="list-style-type: none"> • First two PYs under risk: 1/1/2022–12/31/2023. RM expiration date: 12/31/2023. • First automatic extension occurs on 12/31/2022, extending RM through 12/31/2024. • Second automatic extension occurs on 12/31/2023, extending RM through 12/31/2025. • Third automatic extension occurs on 12/31/2024, extending RM through 12/31/2026. • Fourth automatic extension occurs on 12/31/2025, extending RM through 12/31/2027. • Final expiration date: 12/31/2027.



Dollar Amount: Calculation Methodology

- CMS calculates the amount of the repayment mechanism. The dollar amount funded by the repayment mechanism may exceed the amount specified in the communication of the final amount by CMS.
- The repayment mechanism amount must be equal to the lesser of the following, in accordance with 42 CFR § 425.204(f)(4)(ii):
 - One percent of the total per capita Medicare Parts A and B fee-for-service (FFS) expenditures for the ACO's assigned beneficiaries, based on expenditures for the most recent calendar year for which 12 months of data are available; or
 - Two percent of the total Medicare Parts A and B FFS revenue of its ACO participants, based on revenue for the most recent calendar year for which 12 months of data are available.
- Refer to the [Repayment Mechanism Arrangements Guidance](#) for an example calculation.



Dollar Amount: ACO-MS

- Repayment mechanism amount estimates are provided within the Participation Options Report, available in the Reporting tab, with Phase 1 RFI-1 and RFI-2. Within the report, refer to the Estimate of High or Low Revenue tab.

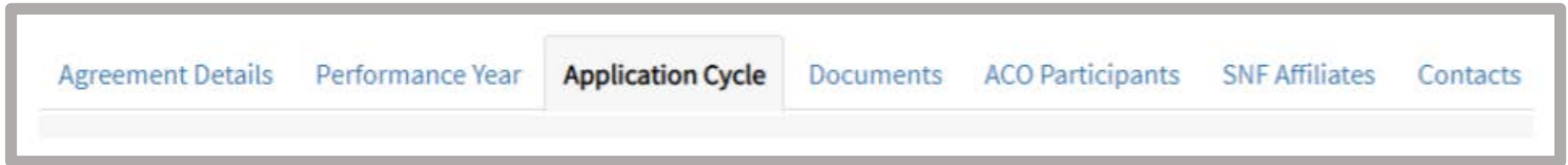


Participation Options Report (prior participation and high/low revenue determinations)



Dollar Amount: ACO-MS

- Amount estimates are also accessible in ACO-MS in the Repayment Mechanism Amount pop-up view.
 - From the My ACOs tab, select your ACO
 - On your ACO's page, select the Application Cycle tab
 - Select the hyperlinked dollar amount listed in the table row for Repayment Mechanism Amount (if applicable) to access a pop-up view with amount calculation details including variable description, calculation notes, and values.



Condition for Calling Funds

- The repayment mechanism documentation should indicate that CMS will make a demand for repayment mechanism funds if the ACO fails to pay shared losses it owes to CMS as a result of participation in the Shared Savings Program, citing the regulations at 42 CFR Part 425. For examples, refer to the [Escrow Agreement Template](#), [Letter of Credit Sample](#), and [Surety Bond Sample](#).



Demand Letter

- Repayment mechanism documentation should allow for payment to CMS in response to a written notice from CMS, sometimes referred to as a demand letter.



Replenishment

- After the repayment mechanism has been used to repay any portion of shared losses owed to CMS, the ACO must replenish the amount of funds available through the repayment mechanism within 90 days. The resulting amount available through the repayment mechanism must be at least the amount specified by CMS in accordance with § 425.204(f)(4). Refer to 42 CFR § 425.204(f)(5).
- If it is not possible to replenish the existing arrangement (for example, because it was terminated), the ACO is required to establish one or more new repayment mechanism(s) to support its participation in the Shared Savings Program.



Account Fees

- Account fees or other fees associated with establishing, maintaining, or canceling a repayment mechanism are the responsibility of the ACO and should not be paid out of the principal or penal sum for the repayment mechanism.



Repayment Mechanism Type Demonstrations

- Availability of Samples
- Key Terms
- Common Errors



Use Samples and Prevent Mistakes

- Using the CMS-approved samples will minimize the potential need for revisions.
 - Note that while using one of these samples will expedite the review process, the use of samples does not guarantee CMS' approval.
- CMS recommends that all ACOs submit a draft repayment mechanism arrangement as a Microsoft Word document.
 - When submitting a draft to CMS for review, please indicate modifications to a CMS-approved sample in Track Changes in a Word document.
 - CMS may return feedback on the draft document using Track Changes and review comments.



Avoidable Errors

- Many deficiencies are avoidable errors. Errors your ACO can help prevent include:
 - Mismatch between the ACO Legal Entity Name (LEN) on the repayment mechanism document and the ACO LEN in ACO-MS
 - Incorrect agreement start date
 - Incorrect expiration date (for letter of credit or surety bond)
 - Incorrect dollar amount or typos in the dollar amount



Fillable Samples in ACO-MS

9. Select the repayment mechanism(s) your ACO intends to use to repay CMS for any shared losses owed: (Select all that apply)

Funds placed in escrow established with an insured institution (US Bank Escrow Agreement)

Step 1: Complete next steps with the bank

i For ACOs that plan to use the U.S. Bank National Association ("U.S. Bank") to establish an escrow account, the ACO should contact Stephanie Haysley at 804-343-1567 or stephanie.haysley@usbank.com.

Step 2: Upload US Bank Escrow (.doc, .docx)

Select File(s)...

+ Browse

By selecting the checkbox, you are acknowledging your ACO does not currently have repayment mechanism documents to upload, and that you agree to upload the documents in the future when the documents are ready for CMS review and by no later than the final due date.

Funds placed in escrow established with an insured institution (CMS Escrow Agreement)

Step 1: Complete Escrow Agreement

Download CMS Escrow

Step 2: Upload CMS Escrow (.doc, .docx)

Select File(s)...

+ Browse

By selecting the checkbox, you are acknowledging your ACO does not currently have repayment mechanism documents to upload, and that you agree to upload the documents in the future when the documents are ready for CMS review and by no later than the final due date.

Surety bond issued by a company included on the U.S. Department of Treasury's List of Certified (Surety Bond) Companies

A line of credit at an insured institution, as evidenced by a letter of credit that the Medicare program can draw upon

- For applicants, navigate to the repayment mechanism tab; and for currently participating ACOs, navigate to the repayment mechanism task on your dashboard.
- Under Repayment Mechanism Type, select applicable type, then select the Download button to access the sample.
- Download a pre-populated sample with your ACO-specific information within the fillable fields (such as legal entity name).
 - Contact Stephanie Haysley (stephanie.haysley@usbank.com) if your ACO chooses to establish an escrow account using a standard US Bank escrow account agreement.
- You can then send the document to your ACO's financial institution outside of ACO-MS.
- When you are ready to submit for CMS review, upload document within ACO-MS.

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Escrow Agreement Overview

- **Escrow Agreement**
 - Completed by ACO and Bank. Signed by ACO, Bank and CMS.
 - Common error: The banking institution or the ACO did not sign the escrow agreement.
- **Schedule I - Notice and Deposit Information**
 - Completed by ACO, Bank, and CMS (CMS contact information).
- **Exhibit A - Certification of Shared Losses or Distribution of Assets**
 - Completed by CMS at the time of making a demand for payment.
- **Schedule II - Account and Description Terms**
 - Completed by Bank.
 - Common error: Account number not included.
- **Schedule III - Escrow Agent's Fees and Disclosures**
 - Completed by Bank.

This presentation includes excerpts of text corresponding to certain Shared Savings Program requirements. Refer to the CMS [Escrow Agreement Template](#) for complete text.



Escrow Agreement Demonstration

6) Investments.

- a) The Assets held in the Account shall be invested by Escrow Agent at the written direction of Depositor. Escrow Agent is directed to automatically invest and reinvest the Assets in the investment identified in Schedule II attached hereto and incorporated herein, until notified in writing of alternate instructions.
- b) Depositor warrants that no investment or reinvestment direction shall be given contrary to investment or reinvestment in the following: (a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America; (b) U.S. dollar denominated deposit accounts and certificates of deposit issued by any bank, bank and trust company, or national banking association (including Escrow Agent and its affiliates), which are either (i) insured by the Federal Deposit Insurance Corporation (“FDIC”) up to FDIC limits, (ii) insured by the National Credit Union Share Insurance Fund (“NCUSIF”) up to NCUSIF limits, or (iii) with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of at least “A-1” by S&P or “P-1” by Moody’s (ratings on holding companies are not considered as the rating of the bank); or (c) money market funds comprised of securities described in (a), including funds managed by Escrow Agent or any of its affiliates. Provided further, however, that Escrow Agent will not be directed to invest in investments that Escrow Agent determines are not consistent with Escrow Agent’s policies or practices.

- Funds are invested in a money market account, treasury backed securities, or both. An interest-bearing money market deposit account may be used.
- For an example, refer to section 6.b of the CMS [Escrow Agreement Template](#).



Escrow Agreement Demonstration

10) Disbursement, Escrow Termination, and Asset Replenishment.

- a) The Account shall remain open, and this Agreement shall not terminate until Escrow Agent receives written direction from Recipient with instructions to disburse Assets as described in subsection b) below.
- b) Escrow Agent shall dispose of the Assets only upon written instruction from an authorized representative of Recipient delivered in the manner set forth in Section 7 of the Agreement and according to the conditions set forth in this section of the Agreement. Such written instructions may, but are not required to, be substantially in the form of Exhibit A hereto.
- c) Before Assets are disbursed for the payment of any amount of Shared Losses, Recipient shall provide further written instructions to Escrow Agent, in consultation with Depositor, for the replenishment of Assets or closure of the Account.

- The instructions for disbursement of the assets, escrow termination and asset replenishment are consistent with CMS' standard escrow instructions.
- Refer to Section 10 and Exhibit A of the CMS [Escrow Agreement Template](#).



Escrow Agreement Demonstration

SCHEDULE III

Escrow Agent's Fees and Disclosures

Account fees, costs, or other expenses associated with establishing, maintaining, or canceling the account are the responsibility of the Depositor; these fees, costs, and expenses shall not be borne by CMS (Recipient) and shall not be charged to the principal.

Escrow Agent has or has not appended a schedule of fees and disclosures to this Agreement. Indicate all of the following documents that are appended:

- Schedule of Escrow Agent's fees.
- Disclosures.
- None of the above.

- The costs, fees, and expenses associated with the escrow account, including any legal expenses incurred by the escrow agent or the ACO, are not borne by CMS and are not charged to the principal.
- Refer to Schedule III of the CMS [Escrow Agreement Template](#).



Escrow Agreement Demonstration

- The principal cannot be encumbered for any purpose other than repaying shared losses owed by the ACO to CMS.
- CMS is not required to indemnify any person or entity against any loss, claim, damages, liabilities, or expenses, including the cost of litigation arising from the escrow agreement or the subject of the agreement.
 - Refer to Section 4.d of the CMS [Escrow Agreement Template](#).
 - Common error: Modification to the indemnification article within the escrow agreement.



Escrow Agreement Demonstration

- CMS will receive advance notice of any change in the amount of funds held in escrow.
- The escrow account is fully funded up to the final repayment mechanism amount by the date specified by CMS.
 - CMS encourages your ACO to work with your financial institution to fully fund your escrow account.
 - Common error: The banking institution did not provide CMS with a letter detailing that the funds are on deposit in the amount of the required final repayment mechanism amount.



Letter of Credit Demonstration

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: **[Letter of Credit #]**

ISSUING INSTITUTION (“Issuer”) Name & Address:

[Issuing Institution Name]

[Issuing Institution Address]

BENEFICIARY Name & Address:

CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”)

ATTN: KAREN MCVEARRY, CM/PERFORMANCE-BASED PAYMENT POLICY GROUP

7500 SECURITY BLVD

MAIL STOP: C5-15-12

DESK LOCATION: C5-16-03

BALTIMORE, MD 21244

Phone: 410-786-5604

Email: sharesavingsprogram@cms.hhs.gov

APPLICANT Accountable Care Organization (“ACO”) Legal Entity Name & Address:

[ACO Legal Entity Name]

[ACO Legal Entity Address]

- The letter of credit is irrevocable.
- CMS is designated as the sole beneficiary.
 - Common error: Institution or ACO specific information is not added or is incorrect.



Letter of Credit Demonstration

AMOUNT: Not exceeding **[required written dollar amount]** USD (\$**[Numerical dollar amount]**)

ISSUANCE DATE: **[Execution Date of Letter of Credit]**

EXPIRATION DATE: (select one)

The expiration date of this letter of credit is **[Date]**, which is 12 months following the conclusion of the last performance year of the Applicant's agreement period in the Medicare Shared Savings Program.

The expiration date of this letter of credit is **[Date that is the last day of the ACO's second performance year under a two-sided model covered by this letter of credit]**, provided that this letter of credit will be automatically extended on **[date that is the last day of the ACO's first performance year under a two-sided model covered by this letter of credit]** and annually thereafter for a 12-month period, such that the term of this letter of credit will eventually cover all remaining performance year(s) of the Applicant's agreement period under a two-sided model and end on **[final expiration date]**, which is 12 months following the conclusion of the last performance year of the Applicant's agreement period. If Issuer elects not to automatically extend this letter of credit for any additional period, it must provide Beneficiary with at least ninety (90) days advance written notice of non-extension. The Issuer's written notice must be sent by traceable carrier to Beneficiary's above-stated address.

- The appropriate credit amount is specified and aligns with the required final repayment mechanism amount.
 - Common error: The written or numerical amount on the letter of credit is incorrectly stated.
- Select applicable option for term and complete the date fields (refer to slide 17).
 - Common error: The expiration date of the letter of credit is incorrectly stated.



Letter of Credit Demonstration

We hereby issue this irrevocable standby Letter of Credit Number **[Letter of Credit #]** in your favor, as the sole beneficiary, for the Account of **[ACO legal entity name]**, for up to an aggregate amount of USD **[numerical dollar amount]**.

Issuer shall pay Beneficiary's demand for payment for an amount available under this Letter of Credit presented to Issuer at the following place for presentation: **[address of place for presentation]**, at or before the close of business on the expiration date. The demand is a dated statement signed by an authorized signatory of the Beneficiary on the Beneficiary's letterhead that includes the following information: Standby Letter of Credit Number; issuance date of the letter of credit; issuing institution name; the amount demanded by the Beneficiary from the Applicant as provided under the Medicare Shared Savings Program regulations at 42 CFR Part 425; and the method of payment to the Beneficiary.

The demand must be accompanied by the following:

1. The original letter of credit and all amendments thereto, if any.
2. A copy of the written notice from the Beneficiary to the Applicant of the amount owed.

Partial or multiple drawings are allowed.

[Optional – Specify if Issuer permits electronic presentation and the circumstances for electronic presentation. An electronic presentation clause, if added, is subject to CMS approval.]

- Letter of credit includes a term allowing CMS to demand payment under the letter of credit as specified in Section 4(v) of the RMAG.
 - Common error: Term allowing CMS to demand payment under the letter of credit doesn't match the requirements in the [Repayment Mechanism Arrangements Guidance](#). For instance, term indicates the statement from CMS is “purportedly” signed by an authorized signatory. Tip: follow the sample.
- Partial or multiple drawings are allowed.



Letter of Credit Demonstration

If any portion of this Letter of Credit is used to pay shared losses owed by the Applicant to the Beneficiary, the Applicant may request an amendment to this Letter of Credit to replenish the amount of funds available through this Letter of Credit within 90 days.

All of Issuer's charges and fees are for the Account of the Applicant and shall not be deducted from any payment Issuer makes under this Letter of Credit.

This Letter of Credit is issued subject to the International Standby Practices 1998 (ISP98), International Chamber of Commerce Publication No. 590.

If you require any assistance or have any questions regarding this transaction, contact **[issuing institution contact (first and last name), phone number]**.

[Issuing institution name]

By: **[Signature]**

Authorized signature

Printed Name: **[Printed Name]**

Title: **[Title]**

- All of the issuing institution's charges and fees are paid by the ACO and shall not be deducted from any payment the issuing institution makes to CMS under the letter of credit.



Surety Bond Demonstration

BOND NUMBER: **[Surety Bond #]**

Surety Bond
MEDICARE SHARED SAVINGS PROGRAM
ACCOUNTABLE CARE ORGANIZATION

KNOW ALL PERSONS BY THESE PRESENTS, that subject to the terms, conditions and limitations of this Bond, **[ACO Legal Entity Name]**, as Principal, and **[Surety Company Legal Entity Name]** of **[Surety Company's Address]**, a corporation organized and existing under the laws of **[State in which Surety Company is licensed]**, as Surety, are held and firmly bound unto the Centers for Medicare & Medicaid Services ("CMS"), an agency of the United States Department of Health and Human Services, of 7500 Security Boulevard, Mail Stop C5-15-12, Baltimore, MD 21244, as Obligee, in the Penal Sum of **[required written dollar amount]** USD (**[\$numerical dollar amount]**) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assignees, jointly and severally, by these presents.

- A statement naming the ACO as the Principal, CMS as the Obligee, the insurance company as Surety and including a statement that the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assignees, jointly and severally.
- The surety's name, street address or post office box number, city, state, and ZIP code on the surety bond should be identical to the surety's legal entity name and address as listed on the [U.S. Department of the Treasury's List of Certified Companies](#).
 - Common error: contact information for surety is missing or inconsistent with the information on the List of Certified Companies.
- The appropriate surety bond amount is specified and aligns with the required final repayment mechanism amount.



Surety Bond Demonstration

WHEREAS, the Principal has entered into the Medicare Shared Savings Program Accountable Care Organization Participation Agreement (“Agreement”) with Obligees, effective **[date of first day of the ACO’s agreement period]** pursuant to which the Principal agreed to participate in the Medicare Shared Savings Program (“Shared Savings Program”) and to comply with the regulations at 42 CFR Part 425 (“Regulations”).

WHEREAS, pursuant to the Regulations, the Principal must pay Obligees the amount of shared losses that Obligees determine are owed upon annual reconciliation of each Performance Year (“Shared Losses”).

WHEREAS, pursuant to the Regulations, the Principal must guarantee its ability to pay the Shared Losses by providing a repayment mechanism in an amount determined by Obligees.

NOW THEREFORE, the condition of this Bond is that the Obligees determine that Principal owes Shared Losses under the Regulations, and the Principal fails to pay the Shared Losses in full to Obligees, subject, however, to the following:

1. The Surety is liable under this Bond for only the Shared Losses determined by the Obligees to be owed by the Principal for the Performance Year(s) under a two-sided model covered by the Agreement, and the Obligees may collect on this Bond up to the Penal Sum.

- Specify the Agreement effective date.
 - Common error: The surety bond included an incorrect date for the first day of the ACO’s agreement period.
- A statement that the surety is liable under the bond for only the shared losses determined by CMS to be owed by the ACO for the performance year(s) under a two-sided model covered by the ACO’s Shared Savings Program participation agreement and CMS may collect on the bond up to amount of the bond (penal sum).



Surety Bond Demonstration

2. Surety agrees to pay the Shared Losses within 30 days of receiving from Obligee written notice of the Shared Losses and sufficient evidence to establish Surety's liability under this Bond. Surety agrees to not contest the amount owed as reflected in the documents provided by Obligee to the Principal. For purposes of this paragraph, the term "sufficient evidence" means the documents Obligee may supply to the Surety to establish that the Principal has failed to pay the Shared Losses in full.
3. CMS is the sole Obligee of this Bond, and no action may be brought on it by, or for the use or benefit of, any person or entity other than CMS.
4. Surety shall notify Obligee promptly in writing if there is a lapse in the Bond coverage or change in the amount of the Bond.

- A statement that the surety agrees to pay the shared losses owed within 30 days of receiving written notice from CMS demonstrating that the ACO has failed to pay the shared losses owed in full.
- A statement that the surety agrees to not contest the amount owed as reflected in the documents provided by CMS to the ACO.
- Assurance that the surety will notify CMS promptly in writing if there is a lapse in the surety bond coverage or a change in the amount of the bond.



Surety Bond Demonstration

5. After the Bond has been used to pay any portion of Shared Losses owed to Obligee, the Principal must replenish the amount of funds available through the Bond within 90 days. Furthermore, the failure or inability of the Principal to replenish the Bond required by Obligee shall not itself constitute a loss to the Obligee recoverable under this Bond.
6. The Surety may cancel this Bond and terminate its liability by giving written notice to the Obligee; provided, however, that such notice must be received by the Obligee at least ninety (90) days prior to the date of termination or cancellation of the Bond. Cancellation or termination shall not itself constitute a loss to the Obligee recoverable under this Bond. The Surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the Bond.

- Includes replenishment provision (refer to slide 23).
 - Common error: Replenishment language states a shorter period than 90 days.
- A statement that the surety will notify CMS at least 90 days in advance of cancellation or termination of the bond.
- A statement that the surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the bond.
 - Common error: This statement is missing.



Surety Bond Demonstration

7. The term of this Bond shall commence on **[date of first day of the ACO's first Performance Year under a two-sided model]**. As indicated, the end date of the term of the Bond is as follows (select one):

The term of this Bond shall end on **[Date]**, which is 12 months following the conclusion of the last performance year of the Principal's Agreement.

The term of this Bond shall end on **[Date that is the last day of the ACO's second performance year under a two-sided model covered by this Bond]**, provided that this Bond will be automatically extended on **[date that is the last day of the ACO's first Performance Year under a two-sided model covered by this Bond]** and annually thereafter for a 12-month period, such that the term of this Bond will eventually cover all remaining Performance Year(s) of the Principal's Agreement under a two-sided model and end on **[final expiration date]**, which is 12 months following the conclusion of the last Performance Year of Principal's Agreement. If Surety elects not to automatically extend this Bond for any additional period, it must provide Obligee with at least ninety (90) days advance written notice of non-extension.

- Select applicable option for term and complete the date fields (refer to slide 17).



Surety Bond Demonstration

In witness whereof, the undersigned Principal and Surety have set their hands and seals on this **[# of day]** of **[Month, Year]**.

[ACO Legal Entity Name]

By: **[Signature]**

Name: **[Printed Name]**

Title: **[Title]**

[Surety Company Name]

By: **[Signature]**

Name: **[Printed Name]**

Attorney in Fact

- Final surety bond must be signed by the ACO and the surety.
- Surety bonds also include notarized power of attorney.
- When in-person execution of the surety bond is not possible, such as a result of the COVID-19 pandemic, CMS may accept a surety bond or rider executed using an electronic seal. ACOs requiring this flexibility should notify CMS in writing during the repayment mechanism review process.



Renewing and Re-entering ACOs

- A renewing ACO, or a re-entering ACO that is the same legal entity as an ACO that previously participated in the program, may use its existing repayment mechanism to establish its ability to repay shared losses incurred for performance years in the new agreement period, provided the ACO submits documentation establishing:
 - The duration of the existing repayment mechanism has been revised to comply with 42 CFR § 425.204(f)(6)(ii).
 - The amount of the repayment mechanism complies with 42 CFR § 425.204(f)(4)(ii). Refer to 42 CFR § 425.204(f)(3)(iv)-(v).
- Revise through the following, as applicable: [Escrow Agreement Amendment Sample](#), *Letter of Credit Amendment*, or *Surety Bond Rider*.
- Renewing ACOs will have an additional question within ACO-MS asking their intent to use their existing repayment mechanism(s) for their new agreement period.



Section III. Maintaining a Repayment Mechanism



Annual Amount Recalculation

- CMS recalculates the ACO's repayment mechanism amount before the second and each subsequent performance year in the agreement period. Refer to 42 CFR § 425.204(f)(4)(iii).
- CMS will determine if the recalculated repayment mechanism amount is at least 50 percent or \$1,000,000 greater than the existing repayment mechanism amount.
- If an ACO's recalculated repayment mechanism amount exceeds the aforementioned threshold, CMS will issue the ACO a written notice, letting the ACO know the amount of its repayment mechanism must be increased to the recalculated repayment mechanism amount.
- The ACO has 90 days from the date of receipt of the written notice to submit documentation for CMS approval showing that the amount of its repayment mechanism has been increased to the amount specified by CMS.



Annual Amount Recalculation: Change Request Cycle

- During the change request cycle, CMS provides two-sided model ACOs with data on repayment mechanism amount estimates and an indicator for whether the recalculated amount met or did not meet the threshold to update repayment mechanism amount.
- After CMS issues final dispositions, an ACO required to adjust its repayment mechanism amount as a result of the annual recalculation will receive a separate written notice letting the ACO know that the amount of its repayment mechanism must be increased to the recalculated repayment mechanism amount.



Use of Repayment Mechanism & Replenishment

- An ACO determined to owe shared losses receives a written notification (demand letter) from CMS of the amount of shared losses it must repay to the program.
- If an ACO has shared losses, the ACO must make payment in full to CMS within 90 days of receipt of notification.
- If the ACO does not completely repay shared losses by the deadline specified in the demand letter, CMS will use the repayment mechanism to support recoupment.
- After the repayment mechanism has been used to repay any portion of shared losses owed to CMS, the ACO must replenish the amount of funds available through the repayment mechanism within 90 days.



Termination of the Repayment Mechanism

- **Conditions for Termination of Repayment Mechanism:** The repayment mechanism may be terminated at the earliest of the following conditions, in accordance with 42 CFR § 425.204(f)(6)(iv):
 - The ACO has fully repaid CMS any shared losses owed for each of the performance years of the agreement period under a two-sided model.
 - CMS has exhausted the amount reserved by the ACO's repayment mechanism, and the arrangement does not need to be maintained to support the ACO's participation under the Shared Savings Program.
 - CMS determines that the ACO does not owe any shared losses under the Shared Savings Program for any of the performance years of the agreement period.
- **Terminated Agreement Period:** An ACO is required to maintain its repayment mechanism after the termination of its participation in the Shared Savings Program until CMS determines the amount of any shared losses owed and collects that amount from the ACO or the repayment mechanism expires.



Section IV. Submitting Originals to CMS and Executing Arrangements



Signatory Actions

- The type of repayment mechanism selected will determine the signatory requirements of the ACO. CMS requires an ACO to sign the final surety bond, escrow agreement, and/or amendment to a letter of credit documentation.
- The following authorized users in the ACO Management System (ACO-MS) meet the signatory requirements of the repayment mechanism:
 - ACO Executive
 - Authorized to Sign (Primary)
 - Authorized to Sign (Secondary)
 - Financial Contact
- CMS will only sign the repayment mechanism; ancillary documents will not be signed.



Submitting Original Documentation to CMS

When delivering original documentation to CMS, please complete both of the following actions:

- **Send a scanned or an electronic copy of the original documentation to CMS.** Please provide this copy either as an upload to ACO-MS (if applicable) or via email to SharedSavingsProgram@cms.hhs.gov. Failure to send a scanned or electronic copy may delay CMS' review and approval of the documentation.
- **Send the original documentation to CMS.** CMS recommends that ACOs and financial institutions send original documentation to CMS via a traceable carrier (e.g., FedEx, UPS, DHL) and provide the tracking information to CMS by email. Refer to the [Repayment Mechanism Documentation Cover Sheet](#), which CMS recommends ACOs and financial institutions include when sending original repayment mechanism documentation to CMS.



Question & Answer Session



Repayment Mechanism Resources

- [ACO Management System \(ACO-MS\)](#)
- [ACO-MS Knowledge Library](#)
- *Accountable Care Organization Spotlight* Newsletter
- [Application Toolkit](#)
- [Application Types & Timeline webpage](#)
- [Repayment Mechanism Arrangements Guidance](#)
- [42 CFR § 425.204\(f\)](#)

Contact Us:

- ACO Applications Mailbox: acoapprove@lmi.org
- Shared Savings Program Mailbox: SharedSavingsProgram@cms.hhs.gov



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